ANITA P. ARRIOLA, ESQ.
JOAQUIN C. ARRIOLA, ESQ.
LEEVIN T. CAMACHO, ESQ.
ARRIOLA, COWAN & ARRIOLA
259 MARTYR STREET, SUITE 201
P.O. BOX X, HAGATNA, GUAM 96910
TELEPHONE: (671) 477-9730/33
TELECOPIER: (671) 477-9734

Attorneys for Plaintiff James L. Adkins

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910

IN THE DISTRICT COURT OF GUAM

JAMES L. ADKINS, Plaintiff, vs. PAUL SUBA, CHIEF OF GUAM POLICE DEPARTMENT; D.B. ANCIANO; SERAFINO ARTUI; JOHN F. TAITANO; J. P. RODRIGUEZ, AND DOES I THROUGH X, Defendants.	CIVIL CASE NO. **CV09-00029** **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM ORDER STAYING DISCOVERY**

By Order of the Magistrate Judge on November 24, 2010, plaintiff James L. Adkins was allowed to amend his First Amended Complaint. Plaintiff filed and served his Second Amended Complaint on the same date. The filing of the Second Amended Complaint renders moot plaintiff's Motion for Reconsideration, defendants Anciano and Artui's Motion for Judgment on the Pleadings, and much of defendants' Response to the Motion for Relief from Order Staying Discovery. At present, there are no pending motions to dismiss, although plaintiff anticipates that defendants will file one or more such motions on behalf of one or all defendants based on qualified immunity or other grounds, as defendants have signaled their intention to do so. Plaintiff therefore modifies his request for relief from Order staying discovery and requests that the Court allow him to conduct discovery based on all of the defendants' (Suba, Anciano, Artui, Taitano and Rodriguez) qualified immunity defenses.

Defendants have quoted Harlow v. Fitzgerald, 457 U.S. 800, 819, n. 6 (1982) for the proposition that until the threshold qualified immunity question is resolved, "discovery should not be allowed." However, as the Supreme Court noted, while discovery involving public officials is one of the evils Harlow aimed to address, neither Harlow nor its subsequent decisions "create an immunity from *all* discovery." Crawford-El v. Britton, 523 U.S. 574, 593 n. 14 (1998) (emphasis in original). Harlow sought to protect officials from the costs of "*broad-reaching*" discovery. Harlow, 457 U.S. at 818 (emphasis added). Since Harlow, the Supreme Court has recognized that limited discovery may sometimes be necessary before the district court can resolve a motion based on qualified immunity. Anderson v. Creighton, 483 U.S. 635, 646 n. 6 (1987); see also Mitchell v. Forsyth, 472 U.S. 511, 526 (1985).

Plaintiff submits that limited discovery is necessary and appropriate here in order to determine, among other things:

1. Whether Anciano and Artui had fair notice that an individual has the First Amendment right to take photographs about policy activity and matters of public interest on public property where the general public is not excluded?

2. Whether Anciano and Artui had fair notice that an individual has the right to be free from unlawful arrest and seizure of property where there is no probable cause to arrest him?

3. Whether Suba had fair notice that he was responsible for issuing current general orders and directives to GPD officers regarding the protection of individuals'

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910

First, Fourth, and Fourteenth Amendment rights and that his failure to do so would result in violation of such rights?

4. Whether Suba had fair notice that he was responsible for providing appropriate training and supervision to GPD officers regarding protection of individuals' First, Fourth, and Fourteenth Amendment rights and that his failure to do so would result in violation of such rights?

5. Whether Taitano and Rodriguez had fair notice that they could not tamper with plaintiff's cell phone and destroy the photographs in the cell phone, in violation of plaintiff's First, Fourth and Fourteenth Amendment rights?

The above list is not exhaustive, but it is limited to questions concerning the qualified immunity defenses that plaintiff anticipates all defendants will raise with regard to his Second Amended Complaint. Plaintiff should have the opportunity to question the defendants regarding these defenses.

CONCLUSION

For all of the foregoing reasons, plaintiff James L. Adkins respectfully requests that the Court grant his motion for relief from Order staying discovery, and allow limited discovery with respect to whether the defendants are entitled to qualified immunity.

ARRIOLA, COWAN & ARRIOLA
Attorneys for Plaintiff James L. Adkins

By: [signature]
ANITA P. ARRIOLA

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of November, 2010, a true and correct copy of **PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR RELIEF FROM ORDER STAYING DISCOVERY** was served electronically with the Clerk of Court using the CM/ECF System to:

ROBERT M. WEINBERG, ESQ.
Assistant Attorney General
Office of the Attorney General
287 West O'Brien Drive
Hagatna, Guam 96910

Dated this 29th day of November, 2010.

ANITA P. ARRIOLA

ARRIOLA, COWAN & ARRIOLA, AGANA, GUAM 96910